

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GARY J. GALLONIO,)	
Plaintiff,)	Civil Action No. 04-1642
)	
v.)	United States District Judge Lancaster
)	United States Magistrate Judge Lenihan
JAMESON MEMORIAL HOSPITAL,)	
Defendant.)	Re: Doc. No. 17

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that Defendant's Motion to Strike Complaint and to Dismiss Action (Doc. No. 17) be granted.

II. REPORT

Procedural Background

On October 27, 2004, Plaintiff filed his Complaint averring violations of Title VII, the Equal Pay Act, the Americans with Disabilities Act, and the Pennsylvania Human Relations Act. Plaintiff's Complaint also averred claims for hostile work environment, retaliation and negligence.

On May 27, 2005, Defendant filed a Motion to Dismiss and Motion for More Definite Statement (Doc. No. 8). The undersigned prepared a Report and Recommendation dated August 8, 2005, recommending that Defendant's Motion to Dismiss and Motion for More Definite Statement be granted in part and denied in part (Doc. No. 12.) The parties did not file objections to the Magistrate Judge's Report and Recommendation.

On September 13, 2005, United States District Judge, Gary L. Lancaster signed an Amended Memorandum Order (Doc. No. 15) adopting Magistrate Judge Lenihan's Report and Recommendation as the Opinion of the Court, granting in part and denying in part Defendant's Motion to Dismiss and Motion for More Definite Statement, and directing Plaintiff to file a more definite statement as to his retaliation and negligence claims pursuant to Fed. R. Civ. P. 12 (e).

Plaintiff did not file a more definite statement relating to his retaliation and negligence claims pursuant to Fed. R. Civ. P. 12 (e).

Thereafter, on October 14, 2005, Defendant filed a Motion to Strike Complaint and Motion to Dismiss Action (Doc. No. 17).

On October 19, 2005, Magistrate Judge Lenihan signed an Order (Doc. No. 18) directing Plaintiff to file a Response to Defendant's Motion to Dismiss and Motion to Strike Complaint by October 28, 2005. As of the date of this Report and Recommendation, Plaintiff has neither complied with this Court's Order of October 19, 2005 (Doc. No. 18), nor has Plaintiff complied with District Judge Lancaster's Order of September 13, 2005 (Doc. No. 15) to file a more definite statement as to Plaintiff's retaliation and negligence claims.

Therefore, it is respectfully recommended that Defendant's Motion to Strike Complaint and Motion to Dismiss Action be granted.

III. CONCLUSION

In accordance with the Magistrate's Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, the parties are allowed ten (10) days from the date of service to file objections to this Report and Recommendation. Any party opposing the

objections shall have seven (7) days from the date of service of objections to respond thereto.

Failure to file timely objections may constitute a waiver of any appellate rights.

/s/ Lisa Pupo Lenihan

LISA PUPO LENIHAN
United States Magistrate Judge

Dated: November 11, 2005

cc: The Honorable Gary L. Lancaster
United States District Judge

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